***United States Court of Appeals***

***for the Second Circuit***


# BRIEF FOR APPELLEE

# 76-7146



*To be argued by*
LOUIS STRASSBERG

In The

## United States Court of Appeals

For The Second Circuit

BISWANATH HALDER,

*Plaintiff-Appellant,*

-against-

QUOTRON SYSTEMS, INC.,

*Defendant-Appellee.*

*On Appeal from the United States District Court for the Eastern District of New York.*





# BRIEF FOR DEFENDANT-APPELLEE

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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BISWANATH HALDER,

*Plaintiff-Appellant,*

*-against-*

QUOTRON SYSTEMS, INC.,

*Defendant-Appellee.*

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## STATEMENT OF FACTS

The Appellant as early as 1969 began submitting resumes to the Appellee QUOTRON SYSTEMS, INC. (then SCANTLIN ELECTRONICS, INC.) in response to advertisements placed in various newspapers, publications, and circulars.

The advertisements merely set forth the general needs of QUOTRON, as well as the salary range being offered, requesting that resumes be submitted.

Other than these various ads, no person to person contact was had between the parties and communications were made only through the mails.

From time to time over a period of three years, the Appellant responded to advertisements of QUOTRON which sought individuals with specialized qualifications. On each occasion

the Appellant was rejected as his qualifications did not meet the specialized needs of QUOTRON.

At no time did QUOTRON specifically seek the services of MR. HALDER, nor make any promises of employment, but merely placed ads seeking applicants who offered those qualities needed for the vacancies to be filled.

On or about June 14, 1972, the Appellant filed a complaint with the State of New York Division of Human Rights alleging that QUOTRON (then SCANTLIN ELECTRONICS, INC.) had engaged in unlawful discriminatory acts by rejecting his applications. A copy of that complaint is annexed hereto and marked Exhibit "A".

On July 13, 1972, a decision was issued by the State of New York Division of Human Rights finding no probable cause to believe that the New York State Human Rights Law had been violated as alleged in the complaint. A copy of that decision is annexed hereto and marked Exhibit "B".

Thereafter an appeal was filed by the Appellant seeking to reverse the order of the State Division of Human Rights dated July 13, 1972. On September 27, 1972, the date scheduled for the hearing of the appeal, MR. HALDER defaulted, and QUOTRON having appeared by LLOYD ALTON, the Appeal Board affirmed the earlier determination and order. A copy of that order and decision is annexed hereto and marked Exhibit "C".

On or about December 15, 1972, a similar charge of dis-

crimination was filed by MR. HALDER with the Equal Employment Opportunity Commission claiming discrimination by QUOTRON based upon his national origin. A copy of that charge is annexed hereto and marked Exhibit "D".

A determination was made by the EEOC on July 31, 1973, indicating that there was no probable cause established by MR. HALDER based upon the earlier complaint filed with the New York State Division of Human Rights, as well as the information and evidence provided by QUOTRON. A copy of that determination is annexed hereto and marked Exhibit "E".

Within ninety (90) days of receipt of the EEOC's notice of right to sue MR. HALDER commenced this instant action in the United States District Court, Eastern District of New York.

After receipt of the Summons and Complaint, an answer was interposed denying virtually in its entirety all the allegations contained therein. Simultaneous with the mailing of the answer to the plaintiff, a notice to take deposition and request to produce documents was mailed to MR. HALDER.

During the course of the deposition held on November 25, 1974, MR. HALDER explained that he had applied to hundreds, if not thousands of companies in search of a job. MR. HALDER further stated that since 1969, he was employed for a period of approximately ten months as a programmer with two companies.

Since July of 1970, he did not have any salaried employment. In response to his applications, he received hundreds of rejections.

To date, there has been no finding by any court or commission as to discriminatory acts alleged by the Appellant herein as to the Appellee or any other parties against whom the Appellant has proceeded. In fact, on each occasion there has been a determination that no probable cause existed concerning discriminatory practices based upon the national origin of the Appellant herein.

## ARGUMENT

The Appellant seeks to impose upon the Appellee the burden of his inability to obtain employment in his chosen profession. He has misinterpreted various occurrences that have evolved since 1969 to reach the illogical conclusion that all his problems with respect to his employment are based upon his being of Indian origin.

Surely prior to 1969 and continuing at the present American corporations have and will continue to place advertisements in foreign newspapers in hopes of obtaining applicants who are qualified to fill vacancies as they arise. The Appellant herein has the mistaken belief that these ads are addressed solely to him and that merely by submitting an application and resume the job is his.

When the Appellant in his brief speaks of being lured to this country based upon an ad placed by the Appellee in the London Times in 1969, it is obvious that he is unfamiliar with the basic implications of such an ad. What an advertisement does in such a case is seek applications which offer the services of that individual. It is not to be construed as an offer which is accepted merely by the submission of a resume. If the Appellant relied on these ads as assurances to him that his services were needed in this country it would be unfair to shift the burden of this mistake upon the Appellee.

The Appellant further errs when he assumes in advance based upon general statements made in advertisements that he is wholly qualified for the positions sought to be filled. Again he makes assumptions without any factual support when he believes his qualifications perfectly match those needed by the Appellee.

Merely upon impressions and assumptions, the Appellant has attempted to weave a pattern which indicates that he has been discriminated against by the Appellee based upon his Indian origin. No factual basis has been established, nor will it ever be.

If on the contrary, the Appellant had submitted hundreds of resumes and applications as he stated, and had been offered jobs by every company other then the Appellee, perhaps a case for discrimination could be made. However, where hundreds of companies have determined the Appellant to be unqualified for vacant positions, there is considerable doubt that discrimination was the basis for these decisions.

The Appellant in his brief sets forth the basic concepts behind the enactment of Title VII of the Civil Rights Act of 1964. The equality of employment that is desired must be based upon a system whereby people are hired on their ability, and not based upon any other extenuating circumstances.

The Appellant in his brief refers to *Griggs v. Duke Power*

*Company 1971, 401 U.S. 424, 91 S. Ct. 849.*

> "The Act does not command that any person be hired simply because he....is a member of a minority group."

MR. HALDER disregards the qualifications of all those other applicants for the position he seeks, and discounts the possibility that his qualifications are not those needed. In effect, he gives no weight to the *Griggs* case, *supra*, as he is demanding employment for the very reason that he is a member of a minority group. The very purpose for which the Act was created, equality, is being disregarded, only to serve the purposes of the Appellant.

## POINT I

### NEITHER THE DISTRICT COURT NOR THE APPELLEE HAS REFUSED TO COOPERATE TO PERMIT FULL AND COMPLETE DISCLOSURE TO THE APPELLANT.

From the outset of this case in the District Court, the Appellee has sought to comply both with the requests and demands of the Appellant, as well as the decisions and orders of the Court.

On or about February 6, 1975, requests for interrogatories were served upon the Appellee's attorneys, seeking responses to nine questions with various subdivisions.

Timely responses were served on March 6, 1975 by the Appellee, with objections, being set forth as to questions 4 through 6 and 9. The basic objection to these questions was the burden that the Appellee would be put to compile responses which would cover a six year period of time.

The specific questions follow:

4) With respect to each and every advertisement, QUOTRON has inserted in publications to recruit computer programmers and analysts from June 1, 1969 to present, state:

A. Name and address of the publication;

B. Date of such advertisement;

C. Address of the operating division originating the advertisement;

D. Number of vacancies advertised;

E. Number of applications received;

F. Number of persons interviewed;

G. Number of persons hired.

5) With respect to each and every computer programmer and analyst hired by QUOTRON at any time, during the period from June 1, 1969 to present, state as to each person:

A. Source of recruitment;

B. Address of operating division where such person was hired;

C. Name, address, telephone number, social security number, and if alien, alien registration number of such person;

D. Date hired;

E. His/her professional experience;

F. His/her academic training;

G. His/her job duties and responsibilities;

H. His/her initial compensation;

I. His/her race and national origin;

J. Criteria and standard employed to select the person;

K. If terminated, date and reason for termination.

6) State the total number of computer programmers and analysts employed by QUOTRON. With respect to each and

every such person, state:

A. Address of operating division where such person is employed;

B. Date hired;

C. Name, address, telephone number, social security number, and if alien, alien registration number of such person;

D. His/her academic training;

E. His/her professional experience;

F. His/her job duties and responsibilities;

G. His/her compensation;

H. His/her race and national origin.

9) State whether at any time since June 1, 1969, to present, any person of a minority race, ethnic group, religious group, or national origin has been denied employment by QUOTRON for any reason whatsoever. If so, state to each and every such person:

A. Name, address, telephone number, social security number, and if alien, alien registration number;

B. Date of denial;

C. Reason for denial.

To answer these questions would be an unfair burden. QUOTRON SYSTEMS, INC., is a public corporation. Based upon

the number of documents to be searched in order to respond to the interrogatories objected to, and the manpower required to do the same, the Appellee took the position that the request was burdensome and oppressive.

In *Struthers Scientific & Intern Corp. v. General Food Corp., 45 F.R.D. 375, (D.C. Tex, 1968)*, the Court held:

> Objection to plaintiff's interrogatory... would be sustained, where interrogatory would necessarily involve an enormous number of documents, and value of material was far outweighed by effort that could be required to accumulate such mass of information.

In Court, on the return date of the Appellant's motion to compel responses thereto, the attorneys for the Appellee, as well as the Court suggested to the Appellant that if the information sought in those interrogatories was so vital to his case, he might at his own expense and time review the records of the Appellee at a mutually convenient time. MR. HALDER refused this suggestion.

The burden to the Appellee in terms of manpower and expenses was estimated to be a minimum of $10,000.00. Apparently the argument of the Appellee was more persuasive and convincing than that of the Appellant as the Court denied the motion in all respects.

In order to justify sustaining of objection to an interrogatory, it must be shown to be unduly burdensome and oppressive. *American Oil Co. v. Pennsylvania Petroleum Products Co., 23 F.R.D. 680 (D.C. R.I. 1959).*

The Court must weigh the burden of amassing the requested information against the useful value of the responses. *Da Silva v. Moore-McCormack Lines, Inc., 47 F.R.D. 364 (E.D. Pa, 1969).*

The alternative given to the Appellant as earlier stated is in conformity with other court decisions.

When requested information is in the control of the party from whom responses are sought, that party should not be required to engage in extensive research and compilation, where the main purpose is to assist the plaintiff to prepare his case. *Fischer & Porter Co. v. Sheffield Corp. 31 F.R.D. 534 (D. Del 1962).*

Where the information is available to the party seeking disclosure, as by consent of the other party, the party desiring this information should assume the burden of locating and assimilating the desired information. *H.K. Porter Co. v. Bremer, 12 F.R.D. 187 (N.D. Ohio, 1951).*

With regard to those interrogatories which request information and data obtainable from available documents, the general rule is that a party should not be permitted to com-

pel his opponent to make compilations or perform research and investigations with respect to statistical information which he might make for himself by obtaining the production of the books and documents pursuant to Rule 34 of the Federal Rules of Civil Procedure, or by doing a little footwork, as the case may be. *Konczakowski v. Paramount Pictures, 20 F.R.D. 588 (D.C. SDNY 1957); Leonia Amusement Corp. v. Loew's Inc., 18 F.R.D. 503 (D.C. SDNY 1955); Pappas v. Loew's Inc., 13 F.R.D. 471 (D.C. Pa. 1953); Tivoli Realty, Inc., v. Paramount Pictures, 10 F.R.D. 201 (D.C. Del. 1950); Cinema Amusements, Inc. v. Loew's Inc., 7 F.R.D. 318 (D.C. Del. 1947); Byers Theaters, Inc. v. Murphy, 1 F.R.D. 186 (D.C. W.D.Va. 1940).*

In the *Tivoli* case, *supra*, the Court stated:

> I adhere to the view expressed in *Cinema Amusements v. Loew's Inc., D.C., 7 F.R.D. 318.* Clearly an interrogated party must furnish relevant information which can be obtained without great labor or expense. It is equally clear to me that, desirable as discovery process may be, it should not place upon a defendant the burden of many thousand man hours of labor and the expense of many thousands of dollars.

In *Erone Corporation v. Skouras Theatres Corporation*, 22

*F.R.D. 494 (D.C. SDNY, 1958)* it was said:

> The mere fact that an interrogatory calls for research and compilation of data is not reason for disallowing it. The Court may determine, however, that the compilation is so extensive that the examining party should be required to prepare the data itself from the books and records. *Konczakowski v. Paramount Pictures, Inc. 20 F.R.D. 588, 593 (D.C. SDNY).*

The Appellant herein based upon questions concerning his employment asked at the deposition, appears to have been in a position to examine the records of the Appellee which were offered to him in open Court without any great inconvenience to him. When the burden was shifted to him, he did not accept the offer made in good faith.

If the information sought was so vital to his case, one would assume that the Appellant would make every effort to obtain the same. Where an appeal is based upon the failure to provide one party with open and full disclosure, and such disclosure is made available, one cannot be heard to complain.

There is no dispute that broad discovery is sought within the federal courts. However, it is within the discretion of the Court after weighing the conflicting burdens of the parties to determine how the information is to be disclosed.

*Baker v. F & F Investment, 470 F. 2d 778 (2th Cir.1972); Montecatini Edison S.P.A. v. E.I. Du Pont De Nemours & Company, 434 F. 2d 70 (3th Cir. 1970); Southern Railway Company v. Lanham, 403 F. 2d 119 (5th Cir. 1968); Bank of American National Trust and Savings Association v. Hayden, 231 F. 2d 595 (9th Cir. 1956); Atlantic Greyhound Corporation v. Lauritzen, 182 F. 2d 540 (6th Cir. 1950); Carter v. Baltimore & O.R. Company, 152 F. 2d 129 (CA DC 1945).*

Although the Appellant cites *Hickman v. Taylor 1967, 329 U.S. 495 S. Ct. 385,* when it states, "Either party may compel the other to disgorge whatever facts he has in his possession." he fails to consider at the same time the earlier cases cited herein.

Again it is to be stressed that the Appellee did not refuse to make the information sought available to the Appellant, but merely sought to shift the burden of obtaining the same.

In stressing broad disclosure, the Appellant refers to *Hercules Powder Company v. Rohm v. Haas Company, 3 F.R.D. 302 (D.C. Del. 1943).* That case calls for discovery unless it can be shown that the evidence sought has no possible value. The inspection of every relevant fact may result in the narrowing of issues to ultimately determine the relevant issues. The case however, does not impose the burden of

collecting the evidence upon any specific party, and a balancing of the burdens must be made.

The Appellee does not seek to disregard the decision in *United States v. Nixon, 1974, 418 U.S. 683, S. Ct. 3090,* wherein that Court stated:

> The need to develope all relevant facts in the adversary system is both fundamental and comprehensive.

Even if the information sought by the Appellant is not relevant, the Appellee agreed to make it available to him, at his expense. The Appellee is not attempting to keep the Appellant or the Courts in the dark concerning its hiring practices.

The Court likewise did not wish to deprive the Appellant of the information he desired, but in its discretion offered him the opportunity to obtain it at his own expense. The Court was not failing to adhere to the liberal spirit of the rules as stated in *Burns v. Thiokol Chemical Corporation, 483 F. 2d 300 (5th Cir. 1973).*

There can be no finding that either the District Court or the Appellee refused to permit full and complete disclosure.

## POINT II

## THE DISTRICT COURT HAS PROPERLY EXERCISED ITS DISCRETIONARY POWER IN AWARDING ATTORNEYS' FEES TO THE APPELLEE.

It is within the discretionary power of the Court to direct payment of an opponent's attorneys fees if required by "dominating reasons of justice." *Sprague v. Ticonic National Bank, 1939, 307 U.S. 161, 59 St. Ct. 777, Universal Oil Products Company v. Root Refining Company, 1946, 328 U.S. 575, 66 S. Ct. 1176.*

The parties and circumstances surrounding this particular case are not ordinary and the Court was faced with a discretionary decision when the question of attorneys fees were raised.

By letter dated February 5, 1976, from CHIEF JUDGE JACOB MISHLER, all parties were directed to appear for trial on February 10, 1976. In preparation for trial, conferences were held with a representative of QUOTRON SYSTEMS, INC., in order to prepare him for the pending trial. Thereafter on February 10, 1976, QUOTRON by its representative and counsel appeared ready for trial only to be apprised for the first time that MR. HALDER was not prepared to proceed, although the letter of February 5 clearly set forth the ramifications for ones refusal to proceed. In light of the inconveniences and expenses imposed upon the Appellee herein for the attor-

neys preparation for and appearance at trial, JUDGE MISHLER awarded nominal attorneys fees. This award represents only a small portion of the legal fees actually incurred by the Appellee.

MR. HALDER has from the outset appeared pro se, apparently lacking the finances to obtain counsel. However, he is able, based upon his lack of employment to devote considerable time in prosecuting this as well as several other similar claims. While he is able to do this, QUOTRON is required to retain counsel to defend the action at a considerable expense.

In the case, *Aleyska Pipeline Service Company v. Wildnerness Society, 1975, 421 U.S. 240, 95 S. Ct. 1612,* the Court held that under ordinary circumstances, the prevailing litigant is not entitled to collect reasonable attorneys fees from the loser.

It must be again stressed that not only is this case not ordinary, but in no way can the nominal award of $500.00 be deemed a recovery of "reasonable" attorneys fees.

Absent a specific statute or contract providing for an allowance of counsel fees, the Court possesses the discretionary power to shift the burden of these expenses. *F.D. Rich Company v. Industrial Lumber Company, 1974, 417 U.S. 116, 94 S. Ct. 2157.*

The federal courts have the inherent equitable power to exercise its discretion whenver "overriding considerations indicate the need for such a recovery." *Mills v. Electric Auto-Lite Company, 1970, 396 U.S. 375, 90 S. Ct. 616.*

Likewise, mechanical rules must give way to equity depending upon the circumstances and flexibility must exist. *Holmberg v. Armbrecht, 1946, 327 U.S. 392, 66 S. Ct. 582.*

MR. HALDER in failing to apprise the Court and his adversaries prior to the date scheduled for trial of his inability to proceed, exercised bad faith which cannot be lightly tolerated. Although MR. HALDER appeared on his own behalf, several other individuals including the Appellee herein, were inconvenienced by his total disregard of the court's letter instructions.

In the argument made by the Appellant in Point II of his brief, he again reaches the conclusion that he was discriminated against, although this assumption is totally unfounded, and contrary to prior determinations by administrative tribunals.

Had an earlier decision been rendered whereby discriminatory acts were found to have occurred, then an award allowing attorneys fees would be inappropriate. However, absent such a finding, and in view of the actions of the Appellant at the time of the trial, the court was justified

in imposing sanctions upon him.

This is not a situation where the giant is attempting, by size alone, to stifle the little man in his attempts to see that justice is done. Quite the contrary, it is the little man here who has more than adequate time to pursue this matter, requiring the giant to expend time and monies in defense of the same. When the Appellant totally disregards the instructions of the court to proceed to trial on a given date, justice requires that he be held responsible for his acts, and the hardships resulting therefrom.

In *Newman v. Piggie Park Enterprises, 1968, 390 U.S. 400, 88 S. Ct. 894*, and in other similar cases, the court found that under ordinary circumstances, the successful plaintiff in a job bias action should recover attorneys' fees where justice requires. Conversely, when a defendant is successful as in this instant case, justice may require that remuneration be given to the defendant with respect to attorneys' fees.

The imposition of an award for attorneys' fees against the Appellant based upon his failure to proceed to trial cannot be considered as an exercise of discretion which will serve to discourage suits of a similar nature. It may discourage the Appellant and others from disregarding the commitments and obligations of other interested parties, but

it cannot be said that the Court abused its discretion in its attempt to redress these acts.

## POINT III

### THE COURT ACTED WHOLLY WITHIN ITS POWERS IN DISMISSING THE PLAINTIFF'S CLAIM FOR HIS FAILURE TO PROSECUTE.

Under Rule 41(b) of the Federal Rules of Civil Procedure, the Court may dismiss the plaintiff's action for his failure to prosecute.

The Court has the authority to dismiss any action with prejudice because of plaintiff's failure to prosecute. *Durham v. Florida East Coast Ry. Co. 385 F. 2d 366 (C.A. Fla. 1967), Giegel v. Sea Land Service, Inc. 44 F.R.D.1 (DC. Puerto Rico 1968).*

Under certain circumstances, the Court has the authority to dismiss complaints sua sponte, without affording notice of the same, and without any adversary hearing. *Link v. Wabash R. Co. 1962, 370 U.S. 626, 82 S. Ct. 1386.*

The Court must be given the power to manage its own affairs in order to achieve the orderly and expeditious disposition of cases. Thus the ability to dismiss actions sua sponte for lack of prosecution is an inherent power. *Kenney v. California Tanker Co., 381 F. 2d 775 (C.A. Del. 1967).*

MR. HALDER, as earlier stated, failed to appear at an appeal hearing, scheduled before the New York State Division of Human Rights. The District Court may take notice of prior determinations of other tribunals for failure to prosecute. *Penn v. Rinaldi, 323 F. 2d 913 (C.A. N.Y. 1963).*

In contravention of the letter of February 5, 1976, directing all parties to appear for trial, MR.HALDER came unprepared. A plaintiff must prosecute an action with due diligence and adhere to the rulings and orders of the Court, lest he may suffer the penalty of dismissal. *Becker v. Safelite Glass Corp. 244 F. Supp. 625 (D.C. Kan. 1965).*

A trial Court may on motion of the defendant dismiss an action for failure of the plaintiff to prosecute with reasonable diligence. *Securities and Exchange Commission v. Power Resources Corp. 495 F. 2d 297 (C.A. Utah, 1974).*

The inherent powers of the Court permits a claim to be dismissed for lack of prosecution. *Industrial Bldg. Materials Inc. v. Interchemical Corp. 278 F. Supp. 938 (D.C. Cal. 1967), Darlington v. Studebaker -Packard Corp., 261 F. 2d 903 (C.A. Ind. 1959), Montgomery v. C.I.R., 367 F. 2d 917 (C.A. Cal. 1966).*

There exists no exact rule which can be laid concerning when a Court is justified in dismissing a case for failure to prosecute. Each case must be considered on its own procedural history and the situation that exists at the time of dismissal. *Sander Mfg. Co. v. Rohm & Haas Co., 298 F. 2d 41 (C.A. Ill. 1962).*

The District Court in its letter of February 5, 1976, not only directed MR. HALDER to appear ready for trial against

QUOTRON, but also against seven other corporate defendants. If in fact, HALDER could not proceed to trial only against QUOTRON, perhaps the Court might have tolerated MR. HALDER's delay. However when an entire calendar is disrupted and the busy Court schedule cannot proceed in an orderly manner, the Court in its discretion may entertain and grant motions for dismissals.

In a similar case, where a plaintiff declined to proceed to trial after his motion for a continuance was denied, it was not deemed an abuse of the Court's discretion to dismiss with prejudice. *Hooper v. Chrysler Motors Corp., 325 F. 2d 321 (C.A. Tex 1963).*

The argument made that the plaintiff could not proceed as the Court denied his motion to compel answers to interrogatories the day prior to the trial, holds no more weight than the denial of the requested continuance in *Hooper, supra.*

The judicial forum exists wherein actions under Title VII may be brought. The Courts have the duty of assuring their availability. *Alexander v. Gardner-Denver Company, 1974, 415 U.S. 36, 94 S. Ct. 1011.*

However, to abuse this availability by disregarding the dictates of the Court and imposing hardships and delays on numerous parties as well as the Court, is something that cannot be tolerated.

It is not so apparent that the Court abused its discretion in dismissing the complaint. It is quite obvious that MR. HALDER abused the privileges afforded him under Title VII which provided the Federal Courts as a forum for controversies and claims thereunder. Such disregard for the judicial process cannot be condoned.

## CONCLUSION

The Appellant has failed to establish any basis for reversing the judgment of the District Court and the judgment appealed from should be affirmed.

Respectfully Submitted,

STRASSBERG & STRASSBERG
*Attorneys for Defendant-Appellee*

STATE OF NEW YORK : EXECUTIVE DEPARTMENT

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EXHIBIT A - COMPLAINT

RECEIVED
JUN 16 1972
REGION 1 a

STATE DIVISION OF HUMAN RIGHTS
on the complaint of

BISWANATH HALDER, Complainant,
against

SCANTLIN ELECTRONICS, INC.;
MARK N. KAPLAN, PRESIDENT, AND
ELLIOTT FRIEDWALD, PROGRAMMING MANAGER, Respondent.

COMPLAINT NO. 1A-CMF-1635-72

I, BISWANATH HALDER

residing at 161-26 86th Crescent, Jamaica Hills, New York 11432 Tel No. 739-1511

charge SCANTLIN ELECTRONICS, INC.; MARK N. KAPLAN, PRESIDENT, AND ELLIOTT FRIEDWALD, PROGRAMMING MANAGER

whose address is 325 Hudson Street, New York, New York 10013 Tel No. 344-0400

with an unlawful discriminatory practice relating to employment on or about February, 1972

by REFUSING TO EMPLOY ME

because of my AGE ( ), RACE ( ), CREED ( ), COLOR ( ), NATIONAL ORIGIN (XX), SEX ( ).

The particulars are:

(1) In February, 1972, I answered an advertisement that appeared in The New York Times, submitting my personal resume.

(2) I have a B.S. in Electrical Engineering, have experience in computer programming, and believe I have the qualifications asked for by Scantlin Electronics, Inc.

(3) In a letter, dated February 28, 1972, Elliott Friedwald, Programming Manager, advised me that my resume "does not reflect the amount and kind of experience required for the openings we now have."

(4) I believe the reason for rejection given me was a subterfuge to hide the real reason -- my national origin.

(5) I am an East Indian, with permanent U.S.A. residence visa. Based on the foregoing, I charge respondents, Scantlin Electronics, Inc.; Mark N. Kaplan, President, and Elliott Friedwald, Programming Manager, with discriminating against me by refusing to employ me because of my national origin, in violation of the New York State Human Rights Law.

I, BISWANATH HALDER the complainant in the above matter, have been informed of my right to private counsel.

X Biswanath Halder
Signature

By reason of the unlawful discriminatory practice of respondent as herein alleged, complainant has already suffered damages in the sum of $UNSPECIFIED.

I have not commenced any civil, criminal or administrative action or proceeding in any court or administrative agency based upon the same grievance.

X Biswanath Halder
(Signature of Complainant)

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss:

BISWANATH HALDER, being duly sworn, deposes and says: that he is the Complainant herein; that he has read the foregoing complaint and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated on information and belief; and that as those matters he believes the same to be true.

Subscribed and sworn to before me Bruce S. Barron X Biswanath Halder
this 15th day of June, 1972
(Signature of Complainant)

# EXHIBIT B - DETERMINATION & ORDER OF STATE DIVISION OF HUMAN RIGHTS

DETERMINATION AND ORDER AFTER INVESTIGATION

Case No. Ia-CNF-1635-72: Biswanath Halder vs. Scantlin Electronics, Inc. and Milton E. Mohr, President

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On June 14, 1972, Biswanath Halder, who is of East Indian national origin, filed a verified complaint with the State Division of Human Rights charging the above-named respondents with an unlawful discriminatory practice relating to employment by refusing to employ him because of his national origin, in violation of the Human Rights Law of the State of New York.

After investigation, the Division of Human Rights determined that there is no probable cause to believe that the respondents have engaged or are engaging in the unlawful discriminatory practice complained of. The record reveals that the complainant responded to a New York Times advertisement of February, 1972, and was one of some 80 applicants for the position advertised by the respondent company. It reveals, further, that the applicants were initially evaluated solely on their statements as contained in their resumes. Based on their evaluation of the resumes received the respondents state that they objectively selected two (2) persons, one in March, 1972, and one in May, 1972. It was the respondents evaluation, judgement and decision that the successful applicants possessed to a greater degree the experience sought. Furthermore, one of the successful applicants is of Dutch national origin, and respondents state that they considered for placement a person apparently of East Indian national origin but that said person failed to accept.

Upon the foregoing, the complaint is ordered dismissed and the file is closed.

THE COMPLAINANT OR ANY PARTY TO THE PROCEEDING BEFORE THE DIVISION MAY APPEAL THIS ORDER TO THE STATE HUMAN RIGHTS APPEAL BOARD, 250 BROADWAY, NEW YORK, NEW YORK 10007, BY FILING A NOTICE OF APPEAL WITHIN FIFTEEN (15) DAYS AFTER THE DATE OF THE MAILING OF THIS ORDER.

STATE DIVISION OF HUMAN RIGHTS

By Muriel R. Shapiro

Muriel R. Shapiro
Regional Manager

DATED: July 13, 1972

TO: Biswanath Halder, Complainant
161-26 86th Crescent
Jamaica Hills, New York 11432

Scantlin Electronics, Inc., Respondent
325 Hudson Street, New York, N.Y.
cc: Elliot Friedwald, Programming Mgr.
Att: Milton E. Muhr, President

STATE OF NEW YORK: EXECUTIVE DEPARTMENT
STATE HUMAN RIGHTS APPEAL BOARD

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BISWANATH HALDER, Complainant-Appellant

vs.

SCANTLIN ELECTRONICS, INC., and MILTON E. MOHR, President,
Respondents

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O R D E R

Case No. CNF-27297-72

APPEAL NO. 1415

The above entitled appeal having come on to be heard before Hon. Emil Levin on the 27th day of September 1972, and Complainant-Appellant, Biswanath Halder, having defaulted in appearance, and Respondents having appeared by Lloyd Alton, Office Manager, who submitted on the record, and the State Division of Human Rights having appeared by Henry Spitz, Esq., General Counsel, by Leonard Stecher, Esq. of Counsel, who submitted on the record, and

The Board having reviewed the record and having decided that the Determination and Order of the State Division of Human Rights in dismissing the verified complaint of the Complainant-Appellant was not arbitrary, capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion (Hon. Irma Vidal Santaella concurring in a separate opinion), it is

ORDERED that the Determination and Order of the State Division of Human Rights made herein on the 13th day of July 1972 be, and the same is hereby affirmed.

STATE HUMAN RIGHTS APPEAL BOARD

By Lloyd L. Hurst
Lloyd L. Hurst, Chairman

Dated: February 22, 1973

TO:

Mr. Biswanath Halder
161-26 86th Crescent
Jamaica Hills, N. Y. 11432

Scantlin Electronics, Inc.
325 Hudson Street
New York, N. Y. 10013
Att: Mr. Elliot Friedwald
Programming Manager

Mr. Milton E. Muhr, President
Scantlin Electronics, Inc.
325 Hudson Street
New York, N. Y. 10013

Commissioner Jack M. Sable
State Division of Human Rights
270 Broadway
New York, N. Y. 10007

Henry Spitz, Esq., General Counsel
State Division of Human Rights
270 Broadway
New York, N. Y. 10007

STATE OF NEW YORK: EXECUTIVE DEPARTMENT
STATE HUMAN RIGHTS APPEAL BOARD

- - - - - - - - - - - - - - - - - - - - - - -

BISWANATH HALDER, Complainant-Appellant

vs.

SCANTLIN ELECTRONICS, INC. and
MILTON E. MOHR, President,
Respondents

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D E C I S I O N

Case No. CNF-27297-72

APPEAL No. 1415

This is an appeal by Biswanath Halder, Complainant-Appellant, hereinafter called Appellant, from a Determination and Order after Investigation by the State Division of Human Rights, hereinafter called Division, dated July 13, 1972 dismissing the complaint wherein Appellant charged the Respondents with an unlawful discriminatory practice relating to employment because of his national origin. Appellant stated that he is an East Indian with permanent U.S.A. residence visa.

In his verified complaint sworn to June 14, 1972 Appellant alleged, among other things, that he has a B.S. degree in Electrical Engineering. In February, 1972 he answered an advertisement in the New York Times and submitted his personal resumé. Appellant believes he has the qualifications required by Scantlin Electronics, Inc., hereinafter called Respondent Company. In a letter of February 26, 1972 Respondent Company's programming manager advised Appellant that his resumé "does not reflect the amount and kind of experience required for the openings we now have." Appellant believes that he was given this reason for rejection as a subterfuge to hide the real reason, his national origin, and charges Respondents with violating the State Human Rights Law by refusing to employ him.

The record shows that an investigation of Appellant's complaint was made by the Division, and that as a result of same, the Division found that there was no probable cause to

believe that the Respondents had engaged in the unlawful discriminatory practice complained of. The record also shows that Respondent Company had received about eighty(80) resumés in reply to a New York Times advertisement for Programmer Analyst. The record includes as exhibits the resumés of Appellant and the two successful applicants, Efren Corona and James Albert.

The various resumés were examined by Respondent Company and, according to the Division report, Appellant did not have the degree of the requirements and the qualifying experience needed by the Respondent Company in that Appellant had a total of approximately two and a half years of experience in computer programming with four different employers over a five-year period; and included two lengthy periods of unemployment. Respondent Company also held that the electrical engineering education of Appellant was of minor value to the Company's needs since they were seeking persons with extensive experience in computer programming.

The Division report also pointed out that Respondents decided that Efren Corona had experience "extremely relevant" to the Company's needs and such experience was gained over a span of five years since 1967 during which time he worked as a programmer and programmer analyst and, in addition, taught programming at the R.C.A. Institute. Respondents also stated that Efren Corona is of Dominican national origin.

The other person employed by Respondent Company was James Albert. According to the report, Respondents stated that in their judgment his desirable experience considerably exceeded that of the Appellant. It further appears from the report that Mr. Albert had also been employed by Penta Computer Associates which company had also employed Appellant, but Respondents considered Mr. Albert's position with Penta as superior to that of Appellant.

The report also indicates that another man was hired in June, 1972 as a programmer who is of Dutch national origin; and that a resumé had also been received from another applicant of East Indian national origin who had been requested by Respondents to make an appointment to discuss the details of the advertised position but he failed to respond to their invitation. It also appears from the report that Respondent Company has a person of Chinese national origin on its professional staff.

The Division in its decision found, in effect, that there was no probable cause to believe that Appellant was refused this position because of discrimination against him on account of his national origin. After having examined the record this Board finds that there is reasonable support in the record for the Division's Decision and Order.

Accordingly, the said Determination and Order of the Division of Human Rights dismissing the complaint was not arbitrary, capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion, and should be affirmed.

STATE HUMAN RIGHTS APPEAL BOARD

Emil Levin, Presiding Member

Dated: February 22, 1973

The following members concur in the foregoing decision and opinion:

HON. LLOYD L. HURST
HON. ALBERT S. PACETTA

STATE OF NEW YORK: EXECUTIVE DEPARTMENT
STATE HUMAN RIGHTS APPEAL BOARD

CONCURRING OPINION

BISWANATH HALDER, Complainant-Appellant

vs.

Case No. CNF-27297-72

SCANTLIN ELECTRONICS, INC. AND MILTON E. MOHR, President

APPEAL NO. 1415

Respondents

Pursuant to the established procedure on defaults at the time of the appeal hearing of the instant matter, parties failing to appear at the place and time designated by the Chairman were to be noted in default unless they notified the Board by mail or by telegram that they were submitting on the record and the Division's Order was to be affirmed without a written decision. Here, appellant defaulted on the date of the designated hearing and also failed to submit on the record.

Accordingly, I vote to affirm the Division's Order.

STATE HUMAN RIGHTS APPEAL BOARD

Dated: February 22, 1973

Irma Vidal Santaella

# EXHIBIT D - CHARGE OF DISCRIMINATION



(If you have a complaint, fill in this form and mail it to the Equal Employment Opportunity Commission's Regional Office in your area. In most cases, a charge must be filed with the EEOC within a specified time after the discriminatory act took place. IT IS THEREFORE IMPORTANT TO FILE YOUR CHARGE AS SOON AS POSSIBLE.

This form is to be used only to file a charge of discrimination based on RACE, COLOR, RELIGION, SEX, or NATIONAL ORIGIN.



Case File No. TNY 2-0198

(PLEASE PRINT OR TYPE)

1 Your Name (Mr., Mrs., Miss) (Mrs. indicate) BISWANATH HALDER Phone Number (201) 684-2320

Street Address 128 WARD STREET

City PATERSON State NEW JERSEY Zip Code 07505

2 WAS THE DISCRIMINATION BECAUSE OF: (Please check one)

Race or Color ☐ Religious Creed ☐ National Origin ☒ Sex ☐

3 Who discriminated against you? Give the name and address of the employer, labor organization, employment agency and/or apprenticeship committee. If more than one, list all.

Name SCANTLIN ELECTRONICS, INCORPORATED

Street address 325 HUDSON STREET

City NEW YORK State N.Y. Zip Code 10013

AND (other parties if any)

4 Have you filed this charge with a state or local government agency? Yes ☐ When MONTH DAY YEAR No ☒

5 If your charge is against a company or a union, how many employees or members? Under 25 ☐ Over 25 ☒

6 The most recent date on which this discrimination took place: Month AUGUST Day 23 Year 1971

7 Explain what unfair thing was done to you. How were other persons treated differently? (Use extra sheet if necessary.)

HAVE RESPONDED THEIR EMPLOYMENT ADVERTISEMENTS ON SEVERAL OCCASIONS, BUT HAVE NEVER RECEIVED AN INTERVIEW.

8 I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

Date SEPTEMBER 6, 1971 Biswanath Halder (Sign your name)

Subscribed and sworn to before me this 8th day of December 19 71

Jean A. Zimmermann (Name) Equal Opportunity Specialist (Title)

If it is difficult for you to get a Notary Public to sign this, sign your own name and mail to the Regional Office. The Commission will help you to get the form sworn to.

FORM APP.: BUR. OF BUDGET—No. 124-R0001

FORM EEOC-5 (REV. 7-68)

Biswanath Halder
161-26 86th Crescent
Jamaica Hills, New York 11432

Charge No. TNY 2-0198
Case No. YNY 4-032

Charging Party

vs.

Scantlin Electronics, Inc.
325 Hudson Street
New York, New York 10013

Respondent

DETERMINATION

Under the authority vested in me by Section 1601.10 b(d) of the Commission's Procedural Rules 29 CFR (p. 20165)(September 27, 1972) I issue, on behalf of the Commission, the following determination as to the merits of the subject charge.

Respondent is an employer within the meaning of Title VII and timeliness and all other jurisdictional requirements have been met. Substantial weight has been accorded the determination of the New York State Division of Human Rights.

Charging Party alleges that Respondent denied him an interview for a position as a computer programmer on August 23, 1971, and on other occasions, because of his national origin (Indian). Charging Party's records show that in a letter dated August 23, 1971, Respondent Vice President of Systems and Programming rejected Charging Party based on the experience listed in his resume. Respondent's records show that the person hired for the position at that time was better qualified than Charging Party.

On June 14, 1972, Charging Party filed a similar complaint with the New York State Division of Human Rights alleging that Respondent discriminated against him in February 1972, by not hiring him because of his national origin. The record shows that Charging Party was again rejected on February 28, 1972, for a programmer position because he lacked the amount and kind of experience required by Respondent. The New York State Division of Human Rights found no probable cause to believe that the New York State Human Rights Law had been violated as alleged. Charging Party appealed this determination, but failed to appear at a scheduled hearing into the matter.

Base File TNY 2-0198

The record also shows that Charging Party has been rejected by Respondent on several other occasions because his qualifications did not meet Respondent's needs.

Respondent employs nine professionals at the situs of the charge, one of whom is a minority group member. There is no evidence that Charging Party's national origin was a factor in Respondent's decision not to employ him.

On the basis of the foregoining I conclude that there is not reasonable cause to believe that Respondent engaged in an unlawful employment practice in violation of Title VII of the Civil Rights Act of 1964, as amended, as alleged.

This determination concludes the Commission's processing of the subject charge. Should the Charging Party wish to pursue this matter further, the enclosed Explanation of Judicial Review explains how the Charging Party may bring a private suit in federal district court.

On Behalf of the Commission:

31 July 1973
Date

Daniel Murnane Mackey
District Director

A 201 Affidavit of Service by Mail — LUTZ APPELLATE PRINTERS, INC.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

BISWANATH HALDER,
Plaintiff- Appellant,

- against -

QUOTRON SYSTEMS, INC.,
Defendant- Appellee,.

*Index No.*

*Affidavit of Service by Mail*

*STATE OF NEW YORK, COUNTY OF* NEW YORK *ss.:*

*I,* Velma N. Howe *being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at* 298 Macon Street, Brooklyn, New York 11216

*That on the* 7th *day of* July *19* 76 *deponent served the annexed* Respondent Brief *upon* Biswanath Halder *attorney(s) for* Plaintiff- Appellee *in this action, at* 173-17 165th Avenue, Freshmeadow, New York 11365 *the address designated by said attorney(s) for that purpose by depositing a* 2 *true copy* s *of same, enclosed in a postpaid properly addressed wrapper in a Post Office Official Depository under the exclusive care and custody of the United States Post Office Department, within the State of New York.*

*Sworn to before me, this* 7th *day of* July *19* 76

Velma N. Howe

VELMA N. HOWE

ROBERT T. BRIN
NOTARY PUBLIC, State of New York
No. 31 0418950
Qualified in New York County
Commission Expires March 30, 1977